

EECBG

Program Alert #3

December 30, 2010

Nebraska Energy Office

1111 "O" Street, Suite 223

PO Box 95085

Lincoln, NE 68509-5085

Fax 402-471-3064

www.neo.ne.gov

For Recipients of the Energy Efficiency and Conservation Block Grant (EECBG) Program, this Program Alert provides additional information and instructions on program compliance. If you have questions or need assistance, please contact:

Jan E. Fox, EECBG Program Coordinator, 402.471.3354, jan.e.fox@nebraska.gov

James W. Lucas, EECBG Technical Advisor, 402.471.3662, james.w.lucas@nebraska.gov

Carol Boyd, EECBG Staff Assistant, 402.471.3353, carol.boyd@nebraska.gov

Or visit the **EECBG Grant Assistance Center** at www.neo.ne.gov/grants/GAcenter.htm

1. Energy Office Staffing Changes:

Carol Boyd of the Nebraska Energy Office is now filling in as the EECBG Staff Assistant. Carol will work primarily with Davis-Bacon compliance while she continues to help with the office's main receptionist duties. Prior to lending her hand with the EECBG program, Carol worked with the Energy Efficiency Appliance Rebate Program (now completed) made possible through the *American Recovery and Reinvestment Act of 2009*.

2. Amendment Request Needed Before Changing a Project:

The Energy Office realizes that during implementation, many things may require you to modify your project(s), i.e. costs may be higher or lower than anticipated, existing equipment failure could create an urgent need, proposed windows don't meet historic preservation standards, engineering/architectural services are required, or difficulty in locating American-made supplies and equipment. We are finding that many of the EECBG Recipients do not realize the significance of language contained in the Financial Aid Agreement your City, Village or County executed with the Energy Office. The Aid Agreement is a legal, binding document. The activities, quantities, make and model numbers, and other items are specifically set out in **Appendix B in the Scope (section #3) and the Budget (section #6)**. As a reminder, parts of the Scope and Budget portions of Appendix B could have changed from your original application and are a result of the Energy Office's application review and funding process.

Before you modify in any way the Scope or Budget of your EECBG project, you must first seek approval from the Energy Office by completing and submitting a **Request for Amendment** to the Aid Agreement. Our intention is not to hold up progress, but to perform a technical analysis to ensure your intended modifications will meet the minimum standards of the EECBG program. The Request for Amendment form is located in the **Grant Assistance Center** at www.neo.ne.gov/grants/GAcenter.htm. If you email the Request to us as a draft for initial review, we will work through the details with you to ensure success before your Chief Elected Official signs the Request and it is mailed to us for formal approval. We will do our best to make the process move quickly so as not to delay your project(s) unnecessarily.

3. **An Important Change With Davis-Bacon Compliance:**

Threshold Amount Already Met: The Energy Office has been made aware of an important interpretation of the construction threshold regarding the Davis-Bacon Act (DBA). Until now, the Energy Office has advised EECBG recipients that contracts for labor less than \$2,000 were not subject to DBA. **This has now changed!** Per the U.S. Department of Energy (DOE), the \$2,000 DBA threshold was already met with the award of EECBG funds to the Nebraska Energy Office in 2009. *The DOE's interpretation of this dollar amount threshold is different than other grant programs with which you might be familiar.* The Energy Office understands this will be an inconvenience to you and we appreciate your cooperation. This means that **Davis-Bacon applies to any of Nebraska's EECBG projects that are:**

- of a construction nature, including alteration and/or repair
- for **any** dollar amount, either above or below \$2,000
- not implemented by employees of state and local units of government

Going forward with your projects: For any project which will have or has had work of a construction nature including alteration and/or repair involving labor:

- You will need to collect certified payroll reports (U.S. Department of Labor form WH-347 available at <http://www.dol.gov/whd/forms/index.htm>) from **every** contractor who has employees performing labor on a project, for every week worked on the project no matter what the dollar amount of the contract. Remember, employees are to be paid **weekly** and reports are to be submitted weekly.
- If the work has already been completed, you will need to:
 - ask the contractor(s) to complete a payroll report(s) after the fact, certify and submit it to you
 - review the payroll reports and confirm the wages paid to each worker are at or above the prevailing wage on the applicable wage determination, and that worker classifications are correct
 - ensure restitution payment to any employee who was not paid at or above the prevailing wage
 - submit to the Energy Office the payroll records and documentation of any restitution paid
 - ensure completion of these steps **as soon as possible**
- If a contractor is a “**sole proprietor**” and does not have employees, the contractor is not subject to DBA. You must determine the person is truly a bona fide sole proprietor of a company by obtaining:
 - the company's Employer Identification Number (EIN), a/k/a Federal Tax ID number
 - a copy of the business license, and
 - the contractor's registration number through the Nebraska Department of Labor www.dol.nebraska.gov/nwd/center.cfm?PRICAT=2&SUBCAT=5G
- If a contractor is a bona fide “**business owner**,” i.e. any employee who owns at least 20% equity interest in the enterprise and who is actively engaged in its management, the contractor may be exempt from DBA even though he/she is performing the work of a laborer or mechanic on the covered project (see page 19, paragraph (6) of the DOE's “Desk Guide to the Davis-Bacon Act” at neo.ne.gov/grants/GAcenter.htm).
- Contractors must submit WH-347 payroll reports **no later than one week after each weekly pay date** and employees are to be paid weekly. You should submit the payroll reports to the Energy Office immediately after reviewing them and resolving any discrepancies. The first payroll report submitted must be originally signed and certified and all subsequent payroll reports may be photocopies or scanned images.

- **Only last four digits of Social Security numbers, please!** Some of the contractors are providing their employees' entire Social Security number and home address on the WH-347 form. Per instructions on the form and DOE's "Desk Guide to the Davis-Bacon Act," **only the last four digits** should be reported. If you receive any payroll reports with the full SSN and/or full home address, you should return them immediately and ask that they be redone and resubmitted to you.
- More DBA information may be found at www.gc.energy.gov/GCHotlineFAQ.htm#Davis_Bacon and www1.eere.energy.gov/wip/davis-bacon_act.html.

4. **Requests for Funds – Please Provide More Documentation:**

As EECBG projects are progressing and Recipients are submitting Requests for Funds forms, some common deficiencies are occurring. Please include the following documentation with each Request for Funds:

- **Detailed Invoices** – The invoice(s) for supplies, equipment, or contractual work must provide adequate detail to ensure what has been purchased and installed agrees with the Scope of work in Appendix B of the Aid Agreement. If the invoice lists "boiler, per bid," please include that part of the bid document that contains the description of the item(s) covered by the invoice.
- **Buy American** – Please provide documentation that shows the items purchased are American-made. This could be a certification or letter from the manufacturer, pages printed from a manufacturer's website with specific model numbers, and/or a digital image of the actual label on the equipment or the box it came in that states "American-Made; Made in the U.S.A," etc.
- **Davis-Bacon** – By federal law, payroll reports are due **no later than one week after each weekly pay date**. Please be sure the contractors are submitting the payroll reports to you promptly and that you are reviewing and submitting them promptly to the Energy Office, whether or not you include them with a Request for Funds.
- **Withhold 10%** – The Energy Office will withhold 10% of the total grant amount for each project until the project is complete and you have submitted all final reports, per Appendix B of the Aid Agreement. (**Example:** For an \$8,000.00 EECBG grant, up to \$7,200 will be paid when requested (and approved) and the remaining \$800 will be withheld.) The final 10% will be available after we receive the final reports.

5. **Buy American:**

The Energy Office has found several instances where EECBG Recipients have had difficulty determining if equipment is American-made. During a recent site visit to an EECBG Recipient, one of our Technical Advisors discovered a "Made in Mexico" label on boxes of light fixtures which had been delivered and were to be installed. The Recipient and their contractor ordered what they believed to be light fixtures manufactured in the United States but were not what the supplier delivered. The fixtures had to be returned for correct ones. In another instance, an EECBG Recipient received two certifications from a company each assuring that a specific model number of a light fixture was made in the U.S. It was later discovered that one of the model numbers was not American-made. This caused the Recipient delays while seeking a solution.

If you have questions or are having difficulty complying with the Buy American provisions, the point of contact with the U.S. Department of Energy is **Andrea Poniecki** at Andrea.Poniecki@EE.Doe.Gov. Feel free to contact Ms. Poniecki for assistance, and please be sure to identify that you represent an EECBG Subrecipient of the Nebraska Energy Office.

6. **New Authorization to Request Funds and Contact Information Form:**

Please complete and submit a new **Authorization to Request Funds and Contact Information form** whenever a chief elected official, grant administrator or other position changes for your EECBG grant. The Energy Office will need the current authorized signatures before a Request for Funds will be processed, and the contact information should be kept up to date. The Authorization form is in the **Grant Assistance Center** at www.neo.ne.gov/grants/GAcenter.htm.

7. **Correction – Engineers and Architects Regulation Act:**

There is a correction to the information contained in Program Alert #2 regarding the Engineers and Architects Regulation Act. We appreciate the Board of Engineers and Architects providing the following:

“All EECBG project are subject to the Nebraska Engineers and Architects Regulation Act if they involve the practices of engineering and/or architecture. Typically, projects regulated by the Act require the involvement of licensed architects and/or professional engineers to design and administer construction. Some projects, however, may be exempted depending on the type of building and number of square feet (Neb. Rev. Stat §81-3449, §81-3453, and Nebraska Administrative Code Title 110, Chapter 10). If you have questions about compliance with these regulations, contact the **Nebraska Board of Engineers and Architects** by phone at **402-471-2021**, or visit the Board’s website at www.ea.ne.gov.”

8. **Reminder -- Reports are Due:**

Please remember, there are four reports due to the Energy Office in **January 2011**, and we would appreciate your timely filing of these reports. Just as you are required to report to us, we are required to report the information to the U.S. Department of Energy:

<u>REPORT</u>	<u>DUE</u>
• Quarterly Payments/Jobs Report --	January 5
• Project Status Report --	January 15; and at project end
• Financial Status Report --	January 15; and at project end
• Annual Federal Funding Report --	January 31

We appreciate your prompt filing of these reports, which are located in the Grant Assistance Center at www.neo.ne.gov/grants/GAcenter.htm.